

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GENE LEGRAND HICKMAN, JR.,)	
)	
Petitioner,)	
)	
v.)	1:23-cv-142
)	1:20-cr-414-1
FCI FORT DIX,)	
)	
Respondent.)	

ORDER

This matter is before this court for review of the Order and Recommendation ("Recommendation") filed on February 16, 2023, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 2.) In the Recommendation, the Magistrate Judge recommends that this action be construed as a habeas petition under 28 U.S.C. § 2241 and dismissed sua sponte without prejudice to Petitioner filing a new petition under § 2241 in the proper district after exhausting any available remedies.

The Recommendation and notice was served on the parties to pursuant to 28 U.S.C. § 636. (Docs. 2, 3.) Petitioner timely filed objections (Doc. 4) to the Recommendation.¹

¹ In his objection, Petitioner requests "clarification of when payments must commence." (Doc. 4 at 1.) "Article III does not assign to federal courts any power to address hypothetical circumstances, give advisory opinions, or resolve abstract disputes." B.R. v. F.C.S.B., 17 F.4th 485, 493 (4th Circ. 2021).


This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objection were made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation, and finds Petitioner's objections do not change the substance of the Recommendation, (Doc. 2). This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 2), is **ADOPTED. IT IS FURTHER ORDERED** that Petitioner's Letter, (Doc. 1), is construed as a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, and that this action is hereby **DISMISSED WITHOUT PREJUDICE**, to Petitioner filing a new petition in the proper district after exhausting any available administrative remedies as set out in the Order and Recommendation.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 3rd day of March, 2023.


United States District Judge